

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO.1730 OF 2004

Namdeo Raghunath Waghmare ...Petitioner

V/s.

The State of Maharashtra & Anr. ...Respondents

Shri. Ganesh Gole for the Petitioner.

Shri.K.V.Saste A.P.P. for the Respondents.

CORAM : A.S. OKA, J.

DATED : JUNE 14, 2005.

P.C.:

1. Rule. The learned A.P.P. waives service. The challenge in this Petition is to the show cause notice issued against the Petitioner by the Respondent No.2 calling upon the Petitioner to show cause as to why order of externment under Section 56(a)(b) of the Bombay Police Act, 1951 should not be passed against the Petitioner.

2. The learned Counsel appearing for the Petitioner pointed out that the show cause notice is based on five offences registered against the Petitioner and three chapter cases involving the Petitioner. He pointed out that the earlier show cause notice was issued by the Respondent No.2 under the same provision of law on 22nd January, 2003. In the said show cause

notice reliance is placed on three offences registered against the Petitioner which are subject matter of the impugned show cause notice. On the basis of the show cause notice dated 22nd January, 2003 order of externment was passed on 2nd May 2003 which has been set aside in a statutory Appeal preferred by the Petitioner. He, therefore, submitted that a fresh show cause notice could not have been issued by placing reliance on three offences which were subject matter of the earlier order of the externment. The learned A.P.P. has opposed the Petition by pointing out that the same is not maintainable only for challenging the show cause notice.

3. Perusal of the impugned show cause notice as well as show cause notice dated 22nd January, 2003 shows that C.R.Nos.49 of 1995, 141 of 1997 and 143 of 1997 which are relied upon in show cause notice dated 22nd January, 2003 are again relied upon in the impugned show cause notice. It is not in dispute that order of externment passed on the basis of show cause notice dated 22nd January, 2003 has been quashed and set aside in a statutory Appeal preferred by the Petitioner and the order passed in Appeal has attained finality. In the order passed in Appeal against the earlier

order, a finding is recorded that the aforesaid offences are very old and the said offences cannot be the basis of the order of externment.

4. In view of this position the said three offences cannot be the basis of another order of externment. It is true that apart from the said three offences there are other offences relied upon in the show cause notice. However, the show cause notice cannot be rectified or corrected in a Petition under Article 226 or 227 of the Constitution of India. Hence, the show cause notice and further proceedings on the basis of the said show cause notice will have to be quashed and set aside.

5. Hence, I pass the following order:

: O R D E R :

i) Rule is made absolute in terms of prayer clause (a). It is made clear that notwithstanding this order it will be open for the Respondents to take appropriate action against the Petitioner.

ii) Parties to act upon an authenticated copy of this

Order.

JUDGE